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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, A. D. 1942.

No. ~~658~~ 657

EDWARD ARMSTRONG BELLOW AND McDONALD  
PRODUCTS CORPORATION,  
*Petitioners,*  
*vs.*  
PARK SHERMAN CO., INC.,  
*Respondent.*

**REPLY BRIEF FOR PETITIONERS.**

ALBERT G. McCaleb,  
J. DAVID DICKINSON,  
*For Petitioners.*



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Respondent's brief does not contain a word in support of the proposition that failure of a patentee to deal with new principles of physics is a circumstance militating against the validity of his patent,—and it does not deny that R. S. 4886 (U. S. C., Title 35, Sec. 31) is repugnant to that proposition.

But respondent's brief (p. 2) suggests that the Circuit Court of Appeals stated only "incidentally" that the patentee Bellow dealt with no new principles of physics.

Whether the statement was made by the court as one of the controlling considerations for its decision, or was made but incidentally or casually, is not to be determined only from the text of the opinion; the history of the case must be considered.

The history of the case is that the trial judge in his decision emphasized (Rec. p. 155, line 1) that Bellow was not "working with new principles of physics"; that on appeal your petitioners assigned error (Rec. p. 163) on the part of the trial court in attributing significance to such circumstance; and that the Circuit Court of Appeals deliberately re-emphasized such circumstance in its opinion (Rec. p. 236).

Therefore, such statement of the Circuit Court of Appeals cannot be dismissed as an incidental remark. It must be regarded as setting forth a circumstance which the court regarded as irreconcilable with the validity of any patent.

Respectfully submitted,

ALBERT G. McCALEB,  
J. DAVID DICKINSON,

*For Petitioners*

